

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

US  
v.  
KOPP

## CERTIFICATE OF SERVICE\*

Docket Number: 1:00-cr-189 A

I, S. KOPP, hereby certify under penalty of perjury that  
(print name)  
on 18 JUL 23, I served a copy of 2<sup>ND</sup> SUPPLEMENT  
(date) TO SUCCESSIVE § 2255 (9 JUN 23)  
(list all documents)

by (select all applicable)\*\*

☐ Personal Delivery☒ United States Mail☐ Federal Express or other  
Overnight Courier☐ Commercial Carrier☐ E-Mail (on consent)

on the following parties:

Name

① USA - WDNY  
138 Delaware AVE  
US Attorney WDNY  
Buffalo, NY 14202  
United States  
TH LEE  
MONICA RICHARDS

Zip Code

Name

② RSA  
Usdc Wdny  
WDNY US Court House  
2 Niagara Square  
Buffalo, NY 14202  
United States

Zip Code

Name

Zip Code

Name

Zip Code

\*A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed.

\*\*If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

18 JUL 23  
Today's Date

James C Kopp  
Signature

16. Legal

Page 1

SECOND SUPPLEMENT  
USCCA ZCA

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District
Name (Under which you were convicted): S. KOPP		Docket or Case No. 00: 189 A
Place of Confinement: F.C.I. Mendota		Prisoner No. 11761-055
UNITED STATES OF AMERICA KOPP -v.		Movant (Include name under which convicted) US

**Motion**

- (a) Name and location of court that entered the judgment of conviction you are challenging: USDC - WDNY  
(b) Criminal docket or case number (if you know): 00: 189 cr
- (a) Date of the judgment of conviction (if you know): 2008  
(b) Date of sentencing: 2007
- Length of sentence: LIFE + 10
- Nature of crime (all counts) § 248  
§ 224(c)
- (a) What was your plea? (check one)  
(1) Not guilty ☒ (2) Guilty [ ] (3) Nolo contendere (no contest) [ ]  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?  
N/A
- If you went to trial, what kind of trial did you have? (Check one) Jury [ ] Judge only [ ]
- Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes [ ] No [ ]

## 16. Legal

Page 2

8. Did you appeal from the judgment of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: USDC - WDNY
- (b) Docket or case number (if you know): 00: 189 cr
- (c) Result: DENIED
- (d) Date of result (if you know): ca. 2009
- (e) Citation to the case (if you know): US v. KAPP
- (f) Grounds raised: \_\_\_\_\_

NON-UNANIMOUS VERDICT  
FORGED POLLING RECORD  
DIRECTED VERDICT  
(OTHERS)

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "yes," answer the following

- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: DENIED
- (3) Date of result (if you know): ca. 2010
- (4) Citation of the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

(SUPRA)

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to question 10 was "yes," give the following information:

- (a) (1) Name of court: USDC
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): 2016
- (4) Nature of the proceeding: DAVIS-RELATED APPEAL
- (5) Grounds raised: " " "

## 16. Legal

Page 3

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes [ ]

No ☒

(7) Result:

PENDING

(8) Date of result (if you know):

N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

USDC-WNY

(2) Docket or case number (if you know):

001 189 cr

(3) Date of filing (if you know):

09 2009

(4) Nature of the proceeding:

SUBPOENA REQUEST

(5) Grounds raised:

REQUESTED AUDIO TAPE TO  
DEMONSTRATE 3 JURORS  
DID NOT SPEAK AT  
VERDICT POLLING.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes [ ]

No ☒

(7) Result:

DENIED

(8) Date of result (if you know):

09 2011

(c) Did you appeal to a federal appellate court jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☒

No [ ]

(2) Second petition:

Yes [ ]

No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

DIRECTED VERDICT AT TRIAL WAS LETHAL ERROR

AT JURY CHARGING THE COURT FORBODE JURY FROM TAKING THE POSSIBILITY OF JUSTIFICATION (CHILD-SAVING) INTO CONSIDERATION IN THEIR DELIBERATIONS

AS WITH GROUND TWO (SUPRA) THE INSTANT GROUND WAS UNDISCOVERABLE BEFORE DOBBS IN APPRECIATING THIS GROUND IT MIGHT BE HELPFUL TO MAKE A CAREFUL DISTINCTION BETWEEN IT & GROUND TWO (JUN 9 FILING)

IN GROUND TWO KAPP WAS PREVENTED FROM PUTTING A JUSTIFICATION DEFENSE BEFORE THE JURY BY WICTA IN LIMINE.

SAID PREVENTION WAS BASED SQUARELY AND ENTIRELY ON THE NON-EXISTENT U.S. CONSTITUTIONAL RIGHT TO KILL WOMB CHILDREN (I.E., ABORTION).

IN THE INSTANT GROUND, BY CONTRAST, THE JURY WAS DIRECTED AT CHARGING TO NOT CONSIDER THE (THEN NON-EXISTENT, PER

DOBBS) U.S. CONSTITUTIONAL RIGHT TO ABORTION AS A POSSIBLE JUSTIFICATION FOR KAPP'S ~~ACTIONS~~ CHILD-SAVING (18 USC SECTION 1841(d)) ACTIONS.

BOTH GROUNDS ARE RELATED, BUT DISTINCT

THEREBY.

THIS VIRTUALLY DIRECTED VERDICT, SIMILAR TO GROUND TWO (SUPRA) HAD ABSOLUTELY NO BASIS OTHER THAN THE CLEAR AND UNEQUIVOCAL PRESUPPOSITION ON THE PART OF THE COURT THAT THE U.S. CONSTITUTIONAL RIGHT TO AN ABORTION EXISTED AT TIME OF TRIAL WHEN IN FACT, SECONDARY TO DOBBS, WE NOW KNOW THAT IT DID NOT.

IN REQUESTING VACATION OF SENTENCE AND RETRIAL, I ALSO HUMBLY ASK FOR PREVENTION OF THIS SECOND LETHAL ERROR AT SAID RETRIAL.

## 16. Legal

Page 4

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: 8

- (a) Supporting facts do not argue or cite law. Just state the specific facts that support your claim.):

(PLEASE SEE ATTACHED)

## (b) Direct Appeal of Ground One:

- (1) If you appeal from judgment of conviction, did you raise this issue?

Yes ☒No ☐

- (2) if you did not raise this issue in your direct appeal, explain why: N/A

## (c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒No ☐

- (2) If your answer to question (c)(1) is "yes," State

Type of motion or petition: HABE

Name and location of the court where the motion or petition was filed: USDC - WNY

Docket or case number (if you know): 00:189 A

Date of court's decision: ca 2010

Result (attach a copy of the court's opinion of order, if available): DENIED

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

## 16. Legal

Page 5

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒No ☐

(5) If your answer to question (c)(4) is "yes," did you raise this issue in the appeal?

Yes ☒No ☐

(6) If your answer to (c) (4) is "yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

USCCA - ZCA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

c9 2012

Result (attach a copy of the court's opinion, if available): \_\_\_\_\_

DENIED

(7) If your answer to question (c)(4) or question (c)(5) is "no," explain why you did not appeal or raise this issue: \_\_\_\_\_

N/A

GROUND TWO: NO MORE GROUNDS, THIS FILING

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appeal from judgment of conviction, did you raise this issue?

Yes ☐ No ☐

## 16. Legal

Page 9

## (c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes [ ]

No [ ]

(2) If your answer to question (c) (1) is "yes," State

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion of order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes [ ]

No [ ]

(4) Did you appeal from the denial of your motion, petition, or application?

Yes [ ]

No [ ]

(5) If your answer to question (c)(4) is "yes," did you raise this issue in the appeal?

Yes [ ]

No [ ]

(6) If your answer to (c)(4) is "yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion, if available): \_\_\_\_\_

(7) If your answer to question (c)(4) or question (c)(5) is "no," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NO

N/A  
No  
WARR  
CROUNDS  
THIS  
FILING



## 16. Legal

Page 10

14. Do you have any motions, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☒ No ☐

If "yes," state the name and location of the court, the docket number, the type of proceeding, and the issues raised.

USDC - WDNY 002189 A  
 DAVIS - RELATED FURCH  
 ON § 924(c) / SUCCESSIVE § 2255

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

CLAUSS, ESQ  
 F.P.D., BUFFALO

(b) At arraignment and plea:

JOHN BRODERICK ESQ  
 NY BAR TICKET

(c) At trial:

PRO SE /

JOHN HUMANN ESQ  
 F.P.D., BUFFALO

(d) At sentencing:

PRO SE

(e) On appeal:

PRO SE

(f) In any post-conviction proceeding:

PRO - SE

(g) On appeal from any ruling against you in a post-conviction proceeding:

BRUCE BRYAN ESQ  
 UTICA NY

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

## 16. Legal

Page 11

17. Do you have any future sentence to serve after you complete the sentence for the judgment the you are challenging? Yes ☒ No ☐

(a) If so, give name and location of the court that imposed the other sentence you will serve in the future: 8<sup>TH</sup> DIV (EAF CO.) NY SUPERIOR CT

(b) Give the date that the other sentence was imposed: 2003

(c) Give the length of the other sentence: 25 TO LIFE

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. TIMELINESS OF MOTION: If your judgment if conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

DOBBS HAD NOT  
HAPPENED YET

( DOBBS V. JACKSON  
US. SUPREME CT  
(2022) )

## 16. Legal

Page 12

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) The date on which the judgment of conviction became final;
- (2) The date on which the impediment to making a motion created by governmental action in violation of the Constitution of laws of the United States is removed, if the Movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: \_\_\_\_\_ prays the court  
will vacate the sentence and any other relief the court may deem appropriate under its equitable  
authority

\* ISSUE CERTIFICATE OF INNOCENCE

\* RETRIAL, IF NECESSARY

or any other relief to which Movant may be entitled

\* VACATE SENTENCE

James C. Kapp  
 Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the forgoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on

18 JUL 2023, (month date, and year).

Executed (signed) on 18 - JUL (date). 2023

James C. Kapp  
 Movant

If the person signing is not Movant, state relationship to Movant and explain why Movant is not signing this motion. N/A

HI SUDGE =)

III WONDERING IF YOU EVER READ:

IL PROMESSO

NAME OF THE ROSE UMBERTO ECO

WINDSWEEP HOUSE MALACHI MARTIN

RECENT ESSAYS, (THE DEWYANT [MN])

CARLOS VIGANO

(\*) WINDUP BIRD CHRONICLE HARUKI MURAKAMI

JESUS OF NAZARETH (ZEFFRELLI DVD)

ROD STEIGER

ANNE BANCROFT

ERNEST BORGNONE

JAMES MASON

MICHAEL YORK

LAWRENCE OLIVIER

CUSACK (DAD?)

OLIVIA HUSSEY

CHRISTOPHER PLUMMER

COPLAND

2<sup>nd</sup> & 3<sup>rd</sup> SYMPHONIES

SHOSTAKOVICH

5<sup>th</sup> symat., (LARGO - OBOE SOLO (1:42))

~~MAHLER~~

3<sup>rd</sup> & 4<sup>th</sup> SYMPHONIES

WAS KNABEN: WUNDERHORN

ERIK SATIE

GYMNOPEDIC

BACH

BRANDENBURG # 6

COPLAND

APPALACHIAN SPRING / FANFARE C. M.

ALL THE "B" SIDES: (NON-HIT / QUIET TRACKS)

JONI MITCHELL

LAURA NYRO

RICKIE LEE JONES

PHOEBE SNOW

MOBY INTO THE BLUE

NED DOUGHERTY  
FAST LANE TO HEAVEN  
EBEN ALEXANDER  
PROOF OF HEAVEN

(\*)  
READ  
EVER  
BOOK  
INTERESTING  
(\*)

23-6642

USDC

CC:

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

## MOTION INFORMATION STATEMENT

Docket Number(s): 1:00-cr-189 RCA

Caption [use short title]

Motion for:

23-6642  
2<sup>nd</sup> SUPPLEMENT TO  
SUCCESSIVE §2255 (9 JUN 23)

US

v.

KOPP

Set forth below precise, complete statement of relief sought:

VACATE SENTENCE

RETRIAL, P.R.N.

MOVING PARTY: J. KOPP

OPPOSING PARTY:

USA - WDNY

☐ Plaintiff☐ Defendant☒ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY:

J. KOPP, pro se

OPPOSING ATTORNEY:

USA - WDNY

11761-055

[name of attorney, with firm, address, phone number and e-mail]

BOX 9

ECT

T.H. LEE

MENOTA CA 93640

+ WENDY RICHARDS

Court Judge/ Agency appealed from:

H<sup>2</sup> R. ARCARA138 Delaware AVE  
US Attorney WDNY  
Buffalo, NY 14202

USDC - WDNY

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

Opposing counsel's position on motion:

☐ Unopposed☐ Opposed☒ Don't Know

Does opposing counsel intend to file a response:

☐ Yes☐ No☒ Don't Know

Is oral argument on motion requested?

☒ Yes☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes☒ No If yes, enter date:

Signature of Moving Attorney:

[Signature]

Date:

18 JUL 23

Service by:

☐ CM/ECF☒ Other [Attach proof of service]

KAND 11761-055  
Box 9  
FBI  
Wendoff CA 93640  
W 150g

00-02-189 18 JUL



LEGAL

MAIL

H<sup>2</sup> RSA

↔ 11761-055 ↔

USdc Wdny  
WDNY US Court House  
2 Niagara Square  
Buffalo, NY 14202  
United States

ATTORNEY AT LAW

2

NIAGARA



14202